

TELEPHONIC INTERVIEW SUMMARY

On November 1, 2006, Applicants undersigned representative discussed the case and the remaining rejection in the final Office Action with Examiner Page. Applicants reiterated that the arguments made in the previous Response demonstrate the patentability of the claims in view of the teaching in the specification and level of skill and knowledge in the art. The Examiner indicated that the rejections would nonetheless be maintained on the grounds submitted on the record and thus no agreement was reached.

Applicants thank the Examiner for the time taken during the call.

REMARKS

Claim 1 has been amended herein to clarify that the claimed fragments have promoter activity. Although this is inherent in the claim as written, the Examiner continues to assert that "fragment" could read on sequences of a single nucleotide. The amendment simplifies this issue for appeal by unambiguously establishing that the claimed fragments have promoter activity and thus could not constitute a single nucleotide sequence, as it is well known in the art that more than a single nucleotide is needed for promoter activity.

Claim 1 has also been amended to clarify that the percentages of identity recited in elements c)-e) are made with respect to the sequence of SEQ ID NO:4 as recited in element a). Again, the amendment removes any ambiguities regarding this issue and therefore simplifies the issues for appeal.

Support for the amendments is found, at least, in the claims as filed and in paragraph 0050 of the application publication.

Entry of this Amendment is respectfully requested under 37 C.F.R. §1.116 on the basis that it simplifies issues for appeal as set forth above.

CONCLUSION

In view of the foregoing, Applicants respectfully request favorable consideration of this case.

The Examiner is invited to contact the undersigned attorney at (512) 536-3085 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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